APPENDIX A.

Filed Nov. 3, 1955.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION.

Case Numbers 48380, 48381, 48382, 48383, 48384, In Bankruptcy.

IN THE MATTERS OF:
WALTER R. THOMAS, ATHENS, INC., WALTER R. THOMAS, INC., WALTER R. THOMAS & ASSOCIATES, INC., MYRON E. FREEMAN & BROTHERS CO., INC., ATLANTA WHOLESALE JEWELRY CO., INC.,

Bankrupts.

The question involved here is the method by which attorney's fees should be awarded to National Acceptance Company under the provisions of its security agreements with the bankrupt corporations. This legal question is all that is involved in this order; however the Court will begin by making certain findings of fact, which actually are not in dispute between the parties:

Finding of Fact.

On April 8, 1964, each of the above-named bankrupts instituted Chapter XI proceedings in the Court. On April 9, 1964, a receiver was appointed to take

charge of the property of bankrupts and to operate the businesses. Subsequently, each of the corporations was adjudicated bankrupt.

Prior to the commencement of these proceedings each of the corporations had entered into financing agreements with National Acceptance Company. When these proceedings commenced National Acceptance Company asserted various claims, which were disputed by the trustee. All of the disputes between National Acceptance Company and the trustee have been compromised and settled, pursuant to previous orders entered herein, with one exception: the right and extent to which attorney's fees should be allowed to National Acceptance Company under the provisions of its security agreements.

All of the security instruments involved have previously been introduced into evidence. There is no dispute that National Acceptance Company received legal services by its counsel in these proceedings. National Acceptance Company contends that it must receive attorney's fees as provided in Georgia Code, 20-506; the trustee asserts that the Court has the authority to determine what fees shall be allowed.

No evidence has been introduced as to the time or efforts expended by National Acceptance Company's counsel. The Court is not asked to determine an amount at this time but only to answer the foregoing legal question. Should the Court accept the legal theory of National Acceptance Company no further evi-

dence would be necessary; conversely, should the Court accept the theory of the trustee then hearing would be necessary to determine what would be a proper fee.

Conclusions of Law.

The case relied upon by National Acceptance Company to establish its position in this matter is Security Mortgage Company v. Powers, 278 U. S. 149; 73 L. Ed. 236 (1928).

The Court disagrees with counsel's interpretation of the holding of the Security Mortgage case, in that Mr. Justice Brandeis, "in his usual incisive and lucid manner," discussed only the point presented to the Court for determination in that case. That was whether attorney's fees should be awarded at all, regardless of whether the attorney's services were rendered before or after adjudication, and it further established that the allowability of such a claim (i.e. the validity of the attorney's fee provision), must be determined by the law of the state.

However, assuming an attorney's fee provision is valid under the law of the state, the Bankruptcy Court must determine whether the claim is enforceable in the bankruptcy proceedings. This, as is pointed out by the attorney for the trustee, is determined by the working of the instrument for the claim to be enforceable in the Bankruptcy Court. The provision must be broad enough to include the specific services ren-

dered. In the opinion of this Court, the claim for attorney's fees here is enforceable and the provisions in the contract are sufficient to include the specific services rendered.

The specific question to which we must address ourselves is the issue of what method we should employ to arrive at attorneys fees. The Security Mortgage decision established the enforceability in general of an attorney's fee provision, and it is stated that the allowability of these fees must be determined by the law of the state. However, there is no language in the Security Mortgage decision which would bind this Court concerning the amount of attorney's fees to be allowed. Collier on Bankruptcy, Vol. 3, Para. 63.15, Pg. 1850, Note 16.

The Fifth Circuit Court of Appeals stated in the case of Arnold vs. Phillips, 117 F.2d 497, 500, 501, (1941), the following observations relating to the equity powers of the Bankruptcy Court:

"We are of the opinion that in a bankruptcy case the ownership of property depends ordinarily on the State law, and so does the existence of a debt and the validity of the security for it. The inquiry begins in State law, but does not end there. Whether when bankruptcy supervenes a title acquired by one creditor is good against other creditors, and what are the relative rights and standing of creditors as against each other, and what the propriety of recognizing and enforcing secured debts under varying circum-

stances, are questions so related to the bankruptcy power as to be regulable by Congress; they are of the essence of bankruptcy law. There necessarily arises also a body of judicial interpretation having the effect of law, which overrides the interpretations of the State Courts on similar questions. The 'equity' administered in the bankruptcy Courts may not be exactly that of the State Courts."

This issue of attorney's fees, no less than any other issue, addresses itself to a great degree of the equity jurisdiction of this Court. In view of the object of bankruptcy liquidation to secure an equality of distribution and of the equity powers lodged in the Court for the purpose of easier achievement of this end, the rule that the Bankruptcy Court has the right to determine what constitutes a reasonable fee has much to commend it, even though neither local law nor the Federal statute may specifically confer such authority to the Court. If an equitable result is to be reached, the Court must determine what constitutes a reasonable fee under the circumstances.

State laws, it is true, have their place in regard to the administration of the Bankruptcy Act, but any state statute that is destructive of the purpose and spirit of the Bankruptcy Act should not be adhered to. The Supreme Court rejected a state decision which did this in the case of Local Loan Co. vs. Hunt, 292 U. S. 34, 78 L. Ed. 1230. Local rules subversive of the Bankruptcy Act simply cannot be accepted as controlling the action of the federal Court.

Georgia Code Section 20-506c is important here and may be controlling to a great extent on the question presented, i.e., if equitable considerations were not present. Certain statutory requirements are set out in this Code Section, which National Acceptance Company contends must be complied with in order for a fee stipulation to be valid. These are:

1. Written notice by the holder,

2. To the maker, indorser or person sought to be held,

3. Advising the holder's intent to enforce the attorney's fee provision; and

4. Advising the maker, indorser, or party sought to be held that he has 10 days to pay the obligation without being liable for attorney's fees.

In the case at bar, notice was given by the attorney for National Acceptance Company that the bankrupt companies had ten days to pay the obligations on these notes without being liable for atrorney's fees. However, after five days from the date of giving such notice, bankruptcy proceedings were filed in these cases. The interruption of this ten day notice period by the filing of these bankruptcy proceedings changed the problem of the attaching of attorney's fees completely. The ten day period never in fact ran, and the bankrupt companies certainly could not dispose of any assets or prefer any creditor once the

jurisdiction of this Court attached. Even though National Acceptance Company took every step that they could legally take to protect their rights to attorney's fees, nevertheless, in my opinion, the intervention of bankruptcy placed the matter in a different light. No new notice was given to the receiver or to the trustee who was at that time the only person with whom the creditors could do business. Therefore, even if we employed the Georgia law, as stated in Section 20.506, as the attorney for National Acceptance Company contends that we must do, still the failure of National Acceptance to come totally within the provisions of this Code Section precludes the right to prevail in this instance.

The case of Strickland vs. Williams, 215 Ga. 175 (1959) and Adair Realty and Loan Company vs. Williams Bros. Lumber Co., Case No. 41332, ... Ga. App. ..... (1965), are cases which touch on the problem presented here, and the latter case gives some information concerning the relationship between state receivership proceedings and bankruptcy proceedings.

Even if we look at the National Acceptance Company's instruments, we notice the terminology "such reasonable attorney's fees." None of these instruments contains a percentage provision. The wording in both of them limits the recovery to "such fees" as the holder incurs or pays to its attorney. In the opinion of the Court, the addition of the word "reasonable" does not strengthen the claim of National Acceptance Company, inasmuch as "reasonable"

should be read in conjunction with "such fees" incurred or paid.

In conclusion, it seems to be that the Federal Courts are not bound by any stipulated percentage whether they be spelled out in the instrument or whether they be referred to as "reasonable" seeking to enforce the Georgia statutory definition thereof. It would be my view that these percentages would constitute only a maximum that the Court would allow, and that regardless of whether the instrument provided for a fixed percentage or only generally for such fee, it would be the duty of the Court to determine what constitutes a reasonable fee under the circumstances.

A hearing will be set in the near future at which time the Court will hear testimony from counsel herein as to what would constitute a reasonable fee in this case.

It is so Ordered.

This 3 day of November, 1965.

W. H. DRAKE, JR.,
(W. Homer Drake, Jr.),
Referee in Bankruptcy.

Attest: A true copy.

Certified this Jul. 27, 1966.

CLAUDE L. GOZA,
Clerk,
By FORREST L. MARTIN,
(Seal) Deputy Clerk.

APPENDIX B.

Filed Apr. 22, 1966.

(Title Omitted.)

This is a petition for review of an order entered by the Referee in Bankruptcy of this Court on November 3, 1965. The Referee has filed his certificate in accordance with the provisions of the Bankruptcy Act, and this matter is now before the Court.

National Acceptance Company (hereinafter referred to as "N.A.C.") is a secured creditor of the bankrupt under promissory notes and bills of sale to secure debt. Security instruments held by N.A.C. provide for payment of attorneys' fees in the event that such fees are incurred, and further provide that such fees would constitute a lien upon the mortgaged property. The bankrupt defaulted in its payments, and on April 3, 1964, N.A.C. gave notice of intention to demand attorneys' fees, pursuant to the provisions of Georgia Code Section 20-506. On April 8, 1964, these proceedings were instituted, initially under Chapter XI of the Bankruptcy Act.

Georgia Code Section 20-506 provides in pertinent part as follows:

"20-506. Attorney's fees in notes, etc., in addition to interest.—Obligations to pay attorney's fees upon any note or other evidence of indebtedness, in addition to the rate of interest specified therein, shall

be valid and enforceable, and collectible as a part of such debt, if such note or other evidence of indebtedness be collected by or through an attorney after maturity, subject to the following provisions:

"....."

"(b) If such note or other evidence of indebtedness provides for the payment of reasonable attorney's fees, without specifying any specific per cent., such provision shall be construed to mean 15 per cent of the first $500 principal and interest owing on such note or other evidence of indebtedness, and 10 per cent. of the amount of principal and interest owing thereon in excess of $500.

"(c) The holder of the note or other evidence of indebtedness, or his attorney at law, shall, after maturity of the obligation, notify in writing the maker, indorser or party sought to be held on said obligation that the provisions relative to payment of attorney's fees in addition to the principal and interest shall be enforced and that such maker, indorser or party sought to be held on said obligation has 10 days from the receipt of such notice to pay the principal and interest without the attorney's fees. If the maker, indorser or party sought to be held on any such obligation shall pay the principal and interest in full before the expiration of such time, then the obligation to pay the attorney's fees shall be void and no Court shall enforce the agreement.

"(d) Obligations to pay attorney's fees contained in security deeds and bills of sale to secure debt shall be subject to provisions of this section where applicable.

The Referee held that N.A.C. was entitled to reasonable attorneys' fees, but concluded that the Bankruptcy Court was authorized to determine the amount of such fees. N.A.C. argues that, under the case of Security Mortgage Company v. Powers, 278 U.S. 149, 73 L.Ed. 236, and Georgia Code Section 20-506, the Referee was bound to enforce the claim of N.A.C. for attorneys' fees in the amount set forth in Georgia Code Section 20-506.

The trustee contends that N.A.C. failed to comply with the provisions of Georgia Code Section 20-506 and is not entitled to attorneys' fees, and further argues that, should this Court find compliance with the statute, the Referee was correct in concluding that the amount of the fee to be allowed is to be determined by the Bankruptcy Court.

Under Security Mortgage Company v. Powers, supra, the validity of N.A.C.'s claim for attorneys' fees is to be determined under Georgia law, and it appears to this Court that N.A.C. is entitled to attorneys' fees. Under the circumstances of this case, it is apparent that the receiver had notice of N.A.C.'s demand. Notice was given to the president of the bankrupt prior to the institution of these proceedings, and subsequent thereto, the receiver was pres-

ent at a hearing where notice of N.A.C.'s intention to claim attorneys' fees was presented to the Bankruptcy Court. Under Security, supra, it was observed that the prescribed period could run after institution of the bankruptcy proceedings. It thus appears that N.A.C. has complied with the statute, and that its claim for attorneys' fees is valid.

For reasons hereinafter set forth, it is unnecessary to determine whether the language of the instruments relied upon by N.A.C. is within the purview of Georgia Code Section 20-506, so as to require a construction of the phrase "reasonable attorneys' fees" as meaning ". . . 15 per cent. of the first $500 principal and interest owing on such note or other evidence of indebtedness, and 10 per cent. of the amount of principal and interest owing thereon in excess of $500."

N.A.C.'s claim to attorneys' fees in the amount provided by Georgia Code Section 20-506 is founded entirely upon the language of Security Mortgage Company v. Powers, supra. Its contention that cases contrary to its position in this regard were overruled by Security, supra, must fail in the light of the uniform rulings of the Courts subsequent to the Security, supra, decision, that under the circumstances as are here presented, it is for the Bankruptcy Court to determine the amount of the fee to be allowed. Webster Drilling Co. v. Walker, 10 Cir. (1961), 286 F. 2d 114; In re Gotham Can Co., 2 Cir. (1931), 48 F. 2d 540; In re Wellborn, 80 F. Supp. 552; In Re Pack-It, Inc., 158 F. Supp. 148. Cf. In Re Ebert, 140 F. Supp. 597. See also Collier on Bankruptcy, Vol. 3, ¶63.15, Pages 1850, 1854.

For the foregoing reasons, the conclusion of the Referee that the petitioner is entitled to reasonable attorneys' fees in an amount to be determined by the Bankruptcy Court was correct, and the Referee's order of November 3, 1965, is hereby affirmed.

It is so Ordered.

This the 20th day of April, 1966.

LEWIS R. MORGAN,
(Lewis R. Morgan),
United States District
Judge.

Attest: A true copy.

Certified this Jul. 27, 1966.

CLAUDE L. GOZA,
Clerk,
By FORREST L. MARTIN,
Deputy Clerk.

(Seal)

APPENDIX C.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24030

NATIONAL ACCEPTANCE COMPANY,
Appellant,

versus

SAMUEL J. ZUSMANN, SR., Trustee in Bankruptcy for WALTER R. THOMAS, ATHENS, INC., ET AL., Bankrupt,
Appellees.

Appeal from the United States District Court for the Northern District of Georgia.

(June 23, 1967.)

Before COLEMAN and AINSWORTH, Circuit Judges, and CARSWELL, District Judge.

COLEMAN, Circuit Judge: On review, the District Court affirmed the holding of the Referee in Bankruptcy that the Referee in his sound discretion, and not the law of Georgia, should determine the amount of attorney's fees due a secured creditor of a bankrupt estate. We reverse.

The National Acceptance Company, hereinafter referred to as N.A.C., is a Georgia corporation. The

bankrupts, hereinafter referred to as Thomas, were likewise Georgia corporations. It has been stipulated that the problem here to be decided applies to each and all of them alike. In 1963, Thomas entered into an accounts receivable financing agreement with N.A.C., and executed promissory notes accordingly. N.A.C. then and thereafter lent money to Thomas. On January 22, 1964, Thomas executed a "Chattel Mortgage Security Agreement" in favor of N.A.C. The notes and the chattel mortgage provided for the payment of attorney's fees and further provided that such fees would constitute a lien on the mortgaged property. By April 3, 1964, Thomas had defaulted in its obligations. On that date, N.A.C. gave Thomas written notice of default and declared its intention to collect attorney's fees as provided in the written evidences of debt, and as further provided by *Georgia Code Annotated* § 20-506 (1933, as amended 1957).[1] On April

[1] 20-506. (4252). Attorney's fees in notes, etc., in addition to interest.—Obligations to pay attorney's fees upon any note or other evidence of indebtedness, in addition to the rate of interest specified therein, shall be valid and enforceable, and collectible as a part of such debt, if such note or other evidence of indebtedness be collected by or through an attorney after maturity, subject to the following provisions:

(a) If such note or other evidence of indebtedness provides for attorney's fees in some specific per cent of the principal and interest owing thereon, such provision and obligation shall be valid and enforceable up to but not in excess of 15 per cent of the principal and interest owing on said note or other evidence of indebtedness.

(b) If such note or other evidence of indebtedness provides for the payment of reasonable attorney's fees, without specifying any specific per cent, such provision shall be construed to mean 15 per cent of the first $500 principal and interest owing on such note or other evidence of indebtedness, and 10 per cent of the amount of principal and interest owing thereon in excess of $500.

(c) The holder of the note or other evidence of indebtedness, or his attorney at law, shall, after maturity of the obligation, notify in writing the maker, indorser or party sought to be held

6, N.A.C. took possession of the property described in the security instrument and instituted foreclosure proceedings.

On April 8, 1964, Thomas began arrangement proceedings under Chapter XI of the Bankruptcy Act. Adjudication followed.

The Referee held that the notice of default and intention to collect attorney's fees did not put the trustee on notice in compliance with § 20-506(c), *Georgia Code Annotated* (see Footnote 1). The District Court reversed on this point and was clearly right in so doing, *Security Mortgage Co. v. Powers*, 1928, 278 U.S. 149, 49 S. Ct. 84, 73 L. Ed. 236. As to this there is no cross appeal.

The sole issue, then, is whether the Referee, as he held, had the authority to fix the amount of the fees independently of the provisions of the Georgia statutes.

By stipulation of the parties, the notes and chattel mortgage were not fully copied into the record. We have before us only the following excerpts from these instruments:

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on said obligation that the provisions relative to payment of attorney's fees in addition to the principal and interest shall be enforced and that such maker, indorser or party sought to be held on said obligation has 10 days from the receipt of such notice to pay the principal and interest without the attorney's fees. If the maker, indorser or party sought to be held on any such obligation shall pay the principal and interest in full before the expiration of such time, then the obligation to pay the attorney's fees shall be void and no court shall enforce the agreement.

(d) Obligations to pay attorney's fees contained in security deeds and bills of sale to secure debt shall be subject to provisions of this section where applicable.

NOTE

> . . . . if the holder hereof shall incur or pay . . . any attorney's fees . . . *such* attorney's fees . . . shall be and is hereby made a further charge and lien upon the collateral pledged hereunder. (Emphasis added)

SECURITY AGREEMENT

> . . . if Mortgagee shall incur or pay any . . . attorney's fees . . . *such reasonable* attorney's fees . . . shall be and is hereby made a further charge and lien upon the mortgaged property. (Emphasis added)

An examination of § 20-506 of the Georgia Code reveals that obligations to pay attorney's fees upon any note *or other evidence of indebtedness* shall be valid and enforceable *as a part of the debt* if such note or other evidence of indebtedness be collected by or through an attorney after maturity (emphasis added). The statute further directs that if the note or other evidence of indebtedness provides for the payment of reasonable attorney's fees, without specifying any specific per cent, such provision shall be construed to mean 15% of the first $500 principal and interest owing on such note or other evidence of indebtedness and 10% of the amount of principal and interest owing thereon in excess of $500.

There is nothing ambiguous or abstruse about these provisions. The parties were all residents of Georgia;

they were charged with notice of the statute. In the note or in the chattel mortgage, or both, they could have contracted for a specific attorney's fee as provided by § 20-506(a). This they did not do. The word "reasonable" does not appear in the note, but it does appear in the security agreement, one of the evidences of the indebtedness owed to N.A.C. We are not to suppose that Thomas would have agreed to pay an unreasonable fee or that N.A.C. would have accepted anything less than reasonable. The mortgage used the term "reasonable". It is too plain for cavil, we think, that if the attorney's fees were actually incurred or paid, then the debtor bound himself to pay as provided by § 20-506(b).

Nevertheless, the trustee asserted before the Referee and continues to insist here that the Referee could ignore the statute and had the authority to determine the amount of attorney's fees to be allowed.

The Referee held, and the District Court agreed:

> "The specific question to which we must address ourselves is the issue of what method we should employ to arrive at attorney's fees. The *Security Mortgage* decision established the enforceability in general of an attorney's fee provision, and it is stated that the allowability of these fees must be determined by the law of the state. However, there is no language in the *Security Mortgage* decision

which would bind this Court concerning the amount of attorney's fees to be allowed."

* * *

"In conclusion, it seems to me that the Federal Courts are not bound by any stipulated percentage whether they be spelled out in the instrument or whether they be referred to as 'reasonable,' seeking to enforce the Georgia statutory definition thereof. It would be my view that these percentages would constitute only a maximum that the Court would allow, and that regardless of whether the instrument provided for a fixed percentage or only generally for such fee, it would be the duty of the Court to determine what constitutes a reasonable fee under the circumstances."

Interestingly enough, *Security Mortgage Company v. Powers, supra,* dealt with a Georgia situation. The Florida Furniture Company was adjudicated bankrupt in the Southern District of Florida. Among its assets was real estate in Georgia, acquired by purchase from the Hanson Motor Company. The property was subject to a loan deed given to secure notes of the Motor Company. An ancillary receiver appointed in the Northern District of Georgia took possession of the Georgia real estate. The Security Mortgage Company was the holder of the Hanson notes. The notes provided for a specific sum, 10%, as attorney's fees, if collected by law or through an attorney at law. It is not necessary that we should here repeat the details of the controversy between the trustee and the mortgage company.

Suffice it to say, in an unanimous opinion, written by Mr. Justice Brandeis, the Supreme Court held that "The validity of the lien claimed by the mortgage company for attorney's fees must be determined by the law of Georgia; for the contract was there made and was secured by real estate there situate . . . . The construction of the contract for attorney's fees presents, likewise, a question of local law."

The Supreme Court recognized that the attorney's fees were a part of the principal debt, secured by a lien upon the property given as security, that the lien became perfect when the principal note and the loan deed securing it were given, and that the secured obligation survived bankruptcy.

In obedience to the views of the Supreme Court that the lien for attorney's fees was perfected upon the execution and delivery of the evidences of indebtedness, that the validity of that lien is to be determined by the law of Georgia, and that the construction of the contract as to attorney's fees is likewise a question of Georgia law, we cannot agree in this case that the Referee has the authority to disregard § 20-506 and to reduce the secured indebtedness, the amount of which the parties fixed for themselves under the provisions of the Georgia statute.

The judgment of the District Court will be reversed and attorney's fees will be allowed as directed by § 20-506(b) of the Georgia Code.

REVERSED, with directions.

United States Court of Appeals
For the Fifth Circuit
October Term, 1966

No. 24030.

D. C. Docket No. Bk 48380, 81, 82, 83 & 84

NATIONAL ACCEPTANCE COMPANY,
Appellant,

versus

SAMUEL J. ZUSMANN, SR., Trustee in Bankruptcy for WALTER R. THOMAS, ATHENS, INC., ET AL, Bankrupt,

Appellees.

Appeal from the United States District Court for the Northern District of Georgia.

Before COLEMAN and AINSWORTH, Circuit Judges, and CARSWELL, District Judge.

JUDGMENT.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment

of the said District Court in this cause be, and the same is hereby, reversed, with directions, in accordance with the opinion of this Court;

It is further ordered and adjudged that the appellees, Samuel J. Zusmann, Sr., Trustee in Bankruptcy for Walter R. Thomas, Athens, Inc., and others, Bankrupt, be condemned to pay the costs of this cause in this Court, in solido, for which execution may be issued out of the said District Court.

June 23, 1967.

Court Costs:

Docketing cause, etc.	$25.00
Cost of Printing Record	$57.50
Total	$82.50

Issued as Mandate: Jul. 21, 1967.

APPENDIX D.

GA. CODE § 20-506 (4252) ATTORNEY'S FEES IN NOTES, ETC., IN ADDITION TO INTEREST.—

Obligations to pay attorney's fees upon any note or other evidence of indebtedness, in addition to the rate of interest specified therein, shall be valid and enforceable, and collectible as a part of such debt, if such note or other evidence of indebtedness be collected by or through an attorney after maturity, subject to the following provisions:

(a) If such note or other evidence of indebtedness provides for attorney's fees in some specific per cent, of the principal and interest owing thereon, such provision and obligation shall be valid and enforceable up to but not in excess of 15 per cent of the principal and interest owing on said note or other evidence of indebtedness.

(b) If such note or other evidence of indebtedness provides for the payment of reasonable attorney's fees, without specifying any specific per cent, such provision shall be construed to mean 15 per cent of the first $500 principal and interest owing on such note or other evidence of indebtedness, and 10 per cent of the amount of principal and interest owing thereon in excess of $500.

(c) The holder of the note or other evidence of indebtedness, or his attorney at law, shall, after ma-

turity of the obligation, notify in writing the maker, indorser or party sought to be held on said obligation that the provisions relative to payment of attorney's fees in addition to the principal and interest shall be enforced and that such maker, indorser or party sought to be held on said obligation has 10 days from the receipt of such notice to pay the principal and interest without the attorney's fees. If the maker, indorser or party sought to be held on any such obligation shall pay the principal and interest in full before the expiration of such time, then the obligation to pay the attorney's fees shall be void and no court shall enforce the agreement.

(d) Obligations to pay attorney's fees contained in security deeds and bills of sale to secure debt shall be subject to provisions of this section where applicable. (Acts 1890-1, p. 221; 1900, p. 53; 1946, pp. 761, 766; 1953, pp. 545, 546; 1957, p. 264.)

§ 28-405. (3252) No preferences; assets, how distributed.

Upon the appointment of a receiver, no creditor shall acquire any preference, by judgment or lien, on any suit or attachment under proceedings commenced after the filing of the petition, and all assignments and mortgages to pay or secure existing debts, made after the filing of said petition, shall be vacated, and the assets be divided pro rata among the creditors, preserving all existing liens. (Acts 1880-1, p. 125.)

CHAPTER II

Courts of Bankruptcy

SECTION TWO (11 U.S.C. § 11)

§ 2. Creation of Courts of Bankruptcy and Their Jurisdiction—The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this Act, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to—

* * *

(2) Allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates;

* * *